

EXHIBIT 2

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WHICH 5-STAR RESORT WANTS TO CENSOR YOUR COMMENTS?

Posted by Kirk Cheyfitz (<http://www.postadvertising.com/author/kcheyfitz/>), 31 Aug 2011 (<http://www.postadvertising.com/2011/08/which-5-star-resort-wants-to-censor-your-comments/>)

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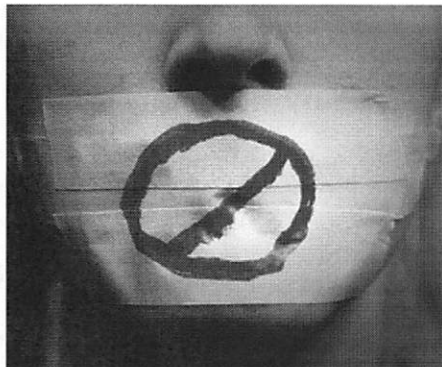
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(<http://www.postadvertising.com/wp-content/uploads/2011/08/censorship1.jpg>) [See 9/2/11 Update at bottom of post]

A strange encounter with a somewhat hostile innkeeper in the wilds of Nova Scotia has focused me on the escalating war that more and more businesses are waging against their customers' free speech rights online.

It all began as my wife Ellen and I tried to check in at Trout Point Lodge ([http://maps.google.com/maps?q=tobeatic+wilderness+nova+scotia&hl=en&ll=44.127028,-65.736694&spn=0.016265,0.034375&oe=utf-](http://maps.google.com/maps?q=tobeatic+wilderness+nova+scotia&hl=en&ll=44.127028,-65.736694&spn=0.016265,0.034375&oe=utf-8&client=firefox-a&z=15&vpsrc=6)

[8&client=firefox-a&z=15&vpsrc=6" target="_hplink"\)](http://maps.google.com/maps?q=tobeatic+wilderness+nova+scotia&hl=en&ll=44.127028,-65.736694&spn=0.016265,0.034375&oe=utf-8&client=firefox-a&z=15&vpsrc=6) in the remote Nova Scotia woods. We had reserved lodging for four nights, but at the front desk we were told we would not be allowed to check in unless we signed a legalistic "Registration Card" that gave up our right to publish (or, perhaps, even talk about) our own opinions or accounts of the place.

As outlandish as it seems, Trout Point's owners, all Americans from the New Orleans area, bluntly insist that:

"...all publications, writings, etc. via the Internet or in any other form whose subject is the result of a stay or other experience with [Trout Point Lodge] is the exclusive intellectual property of TPL and its owners..." and "prior written permission to publish, post etc. is required..."

In brief conversations with one owner, identified by his staff as Charles Leary, we were repeatedly told, "I have the right to control my own publicity." This is certainly half true (owners should be able to control their own PR releases and advertising), but no merchant can control what his customers say about him or his enterprise. When we asked Leary if he didn't have an obligation to warn his customers in advance about his novel policy, he replied sharply, "No. I don't have to warn anybody."

This last was delivered through the rolled-down window of a Range Rover he was driving as we were passing him on the inn's dirt road. He was arriving; we were leaving, having declined to sign his agreement. As we pulled away, he called out, "Well, sue me then!" This was an odd invitation from someone in the hospitality business, but not so strange, perhaps, when you consider that Canadian authorities already are suing him (<http://decisions.courts.ns.ca/nssc/2008/2008nssc334.html>) and at least one other partner in Trout Point for allegedly defaulting on a \$100,000-plus development loan (<http://decisions.courts.ns.ca/nscsca/2009/2009nscsca5.html>) for another venture. (All this and more is chronicled in the legal affairs blog *Slabbed.com* (<http://slabbed.wordpress.com/2011/04/26/slabbed-takes-a-look-at-the-trout-point-business-venture-lets-start-at-the-end-and-work-back>).)

Leary's approach to guests leads one to wonder what he's doing in the hospitality business. More important, knowing that he and Trout Point's other owners apparently (claim to) own all rights to the glowing, mostly anonymous, 5-star reviews on TripAdvisor throws serious doubt on the authenticity of the praise being heaped on the place.

TripAdvisor did nothing to dispel my doubts about the usefulness or truthfulness of its service. A call to its CEO, Stephen Kaufer, went unreturned. Efforts by my wife to quote parts of Trout Point's unusual Registration Card on TripAdvisor were rejected by the site because their policy is to publish only "original content" and, in their view, quoting from a hotel's documents is not original content. It appears they are unfamiliar with the concept of news or verification. The review was finally posted with the quote from the hotel document removed. You can read it here ("Hire a Lawyer!"). (<http://www.tripadvisor.co.uk/ShowUserReviews-g499228-d250110-r117391305->

THE WIDE WAR ON CUSTOMER COMMENTS

Trout Point's policy, like the rest of the tactics in the commercial war against free speech, is being driven, clearly, by fear of the rising power of consumer sentiment—customers sharing their opinions through social media. Some of the merchants' tactics are appalling; (<http://www.postadvertising.com/2010/12/restaurant-owners-to-negative-yelp-reviewers-go-get-hit-by-a-bus/>) some merely clumsy and odd. But there's no doubt that the endgame of this struggle will determine the ultimate usefulness of the web in helping us all make decisions about how we spend our money on everything from hotel rooms to restaurants to medical treatment.

Trust is the necessary basis of an economy, as the writers of the Magna Carta understood some 2,000 years ago and as economists understand today. Without trust between buyer and seller, nothing gets bought or sold. The whole body of commercial law is about establishing and maintaining trust. Honest commenting on the web—consumers truthfully sharing their experiences—is a powerful extension of trust-building. So if the least honest or most manipulative businesses win this war, it will hurt consumers, honest businesses and the entire public marketplace, of course.

Bribery, bullying, forgery and lying have been the standard weapons in the commercial war to contain or counteract consumers' online comments. Recent stories in London's *Daily Mail* ("TripAdvisor bribes: Hotel owners offer free rooms in return for glowing reviews" (<http://www.dailymail.co.uk/travel/article-2013391/Tripadvisor-Hotel-owners-bribe-guests-return-good-reviews.html>)), the travel tech blog *tnooz* ("TripAdvisor accuses TV star and hotel owner of intimidating hotel guests" (<http://www.tnooz.com/2011/01/25/news/tripadvisor-accuses-tv-star-and-hotel-owner-of-intimidating-hotel-guests/>)), *The New York Times* ("In a Race to Out-Rave, 5-Star Web Reviews Go for \$5" (<http://www.nytimes.com/2011/08/20/technology/finding-fake-reviews-online.html>)), the *Techdirt* blog ("Woman Kicked Out Of A Restaurant For Complaining About Bartender On Twitter" (<http://www.techdirt.com/articles/20110817/22340815569/woman-kicked-out-restaurant-complaining-about-bartender-twitter.shtml>)), our blog ("Can Customer Reviews Be Trusted?" (<http://www.postadvertising.com/2011/07/can-customer-reviews-be-trusted/>)) and other media outlets all attest to the ongoing warfare against authentic, unfettered consumer opinion.

A couple years ago, Nielsen did a famous, influential piece of global research (<http://blog.nielsen.com/nielsenwire/consumer/global-advertising-consumers-trust-real-friends-and-virtual-strangers-the-most>) on which forms of "advertising" had the biggest influence on purchase behavior. Their findings stated: "Recommendations from personal acquaintances or opinions posted by consumers online are the most trusted forms of advertising...."

Nielsen's findings contributed significantly to the current notion that universal web access and the ability of ordinary people to share their views worldwide have altered the old power structures, giving might to the ruled instead of their rulers, giving commercial power to the buyers instead of the sellers.

This consumer revolution—powered by the democratization of global publishing—has gotten praise from almost everyone who isn't actually trying to rule a nation autocratically. Now, however, the counterrevolution appears to be starting and the most dedicated counterrevolutionaries turn out to be not just political dictators, but businesses, small and large. This is serious stuff because the power of consumer comments, as Nielsen says, is the trust they command. So what happens once the trustworthiness of all online consumer comments is under attack as more merchants pay for good reviews, plant phony reviews, threaten customers who write bad reviews or bully customers into relinquishing their free speech rights?

Questions of authenticity now hover over all commercial comments on the web, especially those on sites operated solely to aggregate and profit from consumer comments—like TripAdvisor and Yelp—but also, more broadly, all the ecommerce sites that use customer reviews to push sales, including Amazon, B&N, IMDB, NetFlix, RottenTomatoes, Angie's List and so on and on and on.

FROM POLITICAL ASSAULTS TO COMMERCIAL ONES

Not so long ago, attempts to control speech on the Internet were considered the exclusive province of human-rights-hating dictators: the "Great Firewall of China"; Hosni Mubarak's efforts to shut down the Internet in Egypt; Tehran's clumsy efforts to block social media; and so on.

Recently, notorious rights violators like Hu Jintao and Mahmoud Ahmadinejad have been joined in their war against free online speech by lots of seemingly unlikely allies. The UK's David Cameron (<http://www.google.com/search?q=cameron+shut+down+internet&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official>) is a recent convert to their cause, threatening to shut down social media in Britain in the wake of widespread rioting there. San Francisco's rapid transit authority, BART, also has jumped aboard by shutting down customers' cellphone service (<http://techcrunch.com/2011/08/15/bart-shuts-down-cell-service-to-thwart-rumored-protests-gets-actual-protests>) in its underground stations in an effort to stop protesters from using mobile media to organize.

So the rise of the merchant-led attack on free speech represents a newer front in a long-running

war.

Cara Zwibel is the lawyer who directs the Fundamental Freedoms Program of the Canadian Civil Liberties Association (<http://ccla.org/>) (CCLA). While she's not sure about the enforceability of the Trout Point Lodge agreement, she says, "What's most concerning to me and, generally, to our organization is less the enforceability of it and more the chilling effect it would have."

To understand how outrageous Trout Point's demands are, Zwibel points out, it's useful to think of what this agreement might have said in the pre-Internet era. "Would you have ever been able to get people to sign a contract that said, 'You can't tell anyone about your stay here and you can't show anyone the pictures you took.'?" she asks. "It's preposterous."

Looking at the topic more broadly, Zwibel comments, "This is a bit of an interesting situation because it is a private attempt to censor. We are usually concerned about government actions. But there are just as many opportunities for the private sector to curb expression." In more normal cases, she adds, corporations quash free speech by threatening or filing libel suits. But no matter the tactics used, "The private censorship issue is a live one," she says.

WHAT'S TO BE DONE ABOUT IT?

All this begs the question: What can we do to make the world safer for truthful, authentic comments? Unhappily, there's no simple answer.

Zwibel suggests we start in the schools, with a strong curriculum around media literacy that emphasizes using the Internet. She also suggests, "There should be some requirement for sites to post in clear terms their rules and regulations." But like me and most civil libertarians, she's uneasy about censoring phony speech. "I do think there are problems with trying to regulate commercial or inauthentic free speech. I'd be nervous about who's making the determination of what's authentic and what's inauthentic."

The US Federal Trade Commission has famously issued rules (<http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking>) trying to address the need for disclosure of any and all payments made to influence online comments, social media endorsements and recommendations. Trouble is, as virtually everyone has pointed out, the FTC's rules are virtually impossible to enforce.

In the end, policing the Internet is a community responsibility. Now is the time for the Community Truth Squad of the Crowd Police—the informal conspiracy to enforce honesty on the web.

Tools for the Crowd Police may be coming: As reported a month ago on Eater.com, a national foody site, Cornell researchers have put together a piece of software (<http://eater.com/archives/2011/07/28/researchers-develop-software-to-battle-fake-online-reviews.php>) they say is 90% effective at spotting phony reviews. That's certainly a head start, if it can be made easy to use by the average human being.

But most of what the Crowd Police need to do is apply the same shoe-leather persistence as the real police. I just bought the URL TruthInComments.com. Now, who can come up with a solid plan to make it an effective site for posting the truth about lies (<http://www.postadvertising.com/2009/10/the-truth-about-lies/>) online? We'll be handing out badges to all charter Crowd Cops. Join us.

UPDATE – 9/2/11:

Since this post initially went up, I have gotten numerous emails, ranging from apologetic to threatening, from Charles Leary. He alleges bad behavior on my part. He also says the long-running lawsuit filed against Trout Point and him by the Atlantic Canada Opportunities Agency (ACOA) (<http://www.acoa-apeca.gc.ca/English/Pages/Home.aspx>) has been settled. In addition, he says the man I talked to who was identified by his staff as Charles Leary was not, in fact, Charles Leary. But he will not produce the document showing the lawsuit was settled and he will not identify the man he claims I spoke to. Finally, he reaffirms his belief in his policy of attempting to own all his guests' thoughts, observations and opinions about Trout Point.

(image (<http://www.flickr.com/photos/26302301@N00/3111207407/>))

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Doug Handshoe • 5 years ago

Excellent post Kirk! ~ sop

3 ^ | v • Share ›



Marc • 5 years ago

Wow, that's an incredible story - I'm particularly interested in the idea of starting with media literacy in schools. Its certainly a topic that's begging to have some play in schools - but I believe more in the sense of "be careful what you say online, its there forever".

While older web constituents relish the ability to share - I am not so sure that's a guaranteed growing trend. While it might seem natural and liberating to one generation - it could potentially be seen as damaging and dangerous to the next.

Similar to the very heavy, almost scary push in education around AIDs awareness - we're potentially cultivating a very gun shy generation around sharing their thoughts and opinions.

To get back to the main point of the post - it's certainly a ridiculous policy, and with the anonymity the web often provides - how the hell would you even enforce something like that?

1 ^ | v • Share ›



keith_blanchard • 5 years ago

We always knew the Thought Police would come...we just assumed it would be government goons, not commercial ones. Great post, Kirk. It would be fun to see this actually play out in court...to hear a hotel try to defend its right to preemptively censor negative reviews of its product, to a jury furiously texting and posting FB updates. ("Status: can't believe I get to skip work to watch this awkward dance.") This case reminds me a little of the architects who tried a few years back to declare ownership of the imagery of their buildings...i.e., they wanted to make it illegal for you to photograph their building; you'd have to buy THEIR photos or go without. And there was much laughter in the courtroom...

1 ^ | v • Share ›



Barbara • 5 years ago

It's interesting how far you back have to go in the comments on Trip Advisor to find something negative. You wonder when they instituted their policy and how the scathing reviews slipped through! This is something Relais & Chateaux should be investigating. Sounds like these people are in the wrong business. Sorry about your bad experience and hope you found someplace to stay where they treated you better!

^ | v • Share ›



Kirk Cheyfitz → Barbara • 5 years ago

I did. The folks at Digby Pines Resort took us in and showed us some real Nova Scotia hospitality. It's a very nice place and Digby is a town I will always remember with great affection.

^ | v • Share ›



Shockedguest • 5 years ago

Kirk Cheyfitz's behaviour was quite incredible as well that day, very rude and aggressive!

It seems that he is affiliated with "The Huffington Post", Imagine that!!

I was coming up from the parking area when I saw people inside the two cars talking, Mr. Cheyfitz was in lexus with a woman. They were screaming at the people inside the landrover and at some some shot the finger and screamed

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